(2)

88-1622

No. _____

Supreme Court, U.S.
FILED
MAR 31 1989
JOSEPH F. SPANIOL, JR.
CLERK

INTHE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

RICHARD L. MITCHELL, JR.,

Petitioner,

V.

THE BOARD OF TRUSTEES OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDICES D-1 THRU V-1

SEPARATE VOLUME

RICHARD L. MITCHELL, JR.
1282 Redondo Boulevard
Los Angeles, CA 90019

Petitioner in Propria Persona

D-1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

No: CV 86-5105-WMB Date: Sept. 29, 1986

Richard L. Mitchell, Jr., v. Board of Trustees, etc., et al.

DOCKET ENTRY:

HON. Wm. MATTHEW BYRNE, JR., JUDGE

Duane Hostetter-Deputy Clerk

Rosa Treibach-Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Richard Mitchell, ipp

ATTORNEYS PRESENT FOR DEFENDANTS

Warren Kinsler

PROCEEDINGS: Plaintiff's motion to remand to State Court.

The Plaintiff is present in pro per. Defendants counsel is present. The motion to remand is argued to the Court. The motion is denied

Initials of Deputy Clerk _____

FILED NOV 21 1987
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD L. MITCHELL, JR., Plaintiff-Appellant, vs. LOS ANGELES COMMUNITY COLLEGE DISTRICT, et al., Defendants-Appellees.	No. 87-5966 DC# CV-86-5105 WMB Central California ORDER

Before: ALARCON, NORRIS and LEAVY, Circuit Judges

Appellant's response to the order to show cause fails to demonstrate good cause why this appeal should not be dismissed for lack of jurisdiction. The district court's order granting a motion to vacate the default judgment is not a final, appeable order and the appellant has not otherwise shown that the order is final. 28 U.S.C. § 1291; see also Resnik v. La Paz Guest Ranch

289 F.2d 814, 817 (9th Cir. 1961).

Therefore, the appeal is dismissed for lack of jurisdiction.

MoCal 11/20/87
dp

F-1

FILED JAN 3 1989
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD L. MITCHELL, JR., Plaintiff-Appellant, vs. LOS ANGELES COMMUNITY COLLEGE DISTRICT; LESLIE KOLTAI; VIRGINIA F. MULROONEY; KENNETH S. WASHINGTON; CATHERINE CLOSE; WALTER C. MAC INTOSH; RODNEY L. PATTERSON, Defendants-Appellees.	No.87-6553 No.87-6618 D.C. No. CV 86-5105-WMB ORDER

Before: KOELSCH, FARRIS, and WIGGINS, Circuit Judges

The request to de-publish is denied.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD L. MITCHELL, JR., Plaintiff-Appellant, vs. LOS ANGELES COMMUNITY COLLEGE DISTRICT; LESLIE KOLTAI; VIRGINIA F. MULROONEY; KENNETH S. WASHINGTON; CATHERINE CLOSE; WALTER C. MAC INTOSH; RODNEY L. PATTERSON, Defendants-Appellees.	Nos. 87-6553; 87-6618 D.C.No. CV-86-5105-WMB ORDER AND AMENDED OPINION

Appeal from the United States District Court for the Central District of California, William Matthew Byrne, Jr., District Judge, Presiding

Submitted on Briefs August 5, 1988*
Pasadena, California

Memorandum Filed August 17, 1988
Opinion Filed November 8, 1988
Amended January 11, 1989

Before: M. Oliver Koelsch, Senior Circuit Judge, Jorome Farris and Charles Wiggins, Circuit Judges.

Opinion by Judge Wiggins

* The panel finds this case appropriate

260 MITCHELL V. LOS ANGELES COMMUNITY COLLEGE

SUMMARY

PUBLIC EMPLOYEES

Affirming a grant of summary judgment, the court held that a college district is a state entity possessing eleventh amendment immunity from 42 U.S.C. §§ 1981, 1983, and 1985 claims for damages and for injunctive relief.

Plaintiff-appellant Richard Mitchell appeals from the district court's grant of summary judgment to the defendants. Mitchell brought a complaint alleging employment discrimination based on age, sex and race against the defendants community college district's decision to hire someone else for the position of Senior Director. The complaint raised

for submission without oral argument pursuant to Ninth Circuir Rule 34-4 and Fed.R.App.P. 34(a).

claims under 42 U.S.C. §§ 1981, 1983, and 1985; 29 U.S.C. §§ 621-34; 42 U.S.C. §§ 2000e-2000e-17; for declaratory and injunctive relief and pendent state claims. The district court found that the appellant's 1981, 1983 and 1985 claims, as well as his ADEA and TITLE VII claims, were barred by the statute of limitations. Alternatively, the court found that the appellant had failed to raise a genuine iss of material fact to support his allegations of discrimination. The court also found that the defendant Los Angeles Community College District and the individual defendants, enjoyed eleventh amendment immunity from damages of injunctive relief. Further, the court held that the plaintiff's state based constitutional and statutory claims were time barred under California law. Because California state colleges and uni-

versities are dependent instrumentalities of the state, the district is a state entity that possesses eleventh amendment immunity from the appellant's section 1981, 1983 and 1985 claims in damages and for injunctive relief. Likewise, the individual defendants share in the district eleventh amendment immunity because they were sued in their official capacities.

Mitchell filed his ADEA and Ttle VII claims one year and five months after receipt of his Right to Sue notice, well after the 90 day period. Mitchell's state claims were brought, at a minimum, two years after the unlawful employment practices occurred. This is at least one year after the one year period provided.

COUNSEL

Richard L. Mitchell, Jr., Los Angeles,

California, for the plaintiff-appellant

Warren S. Kinsler, Los Angeles Community College District, and Thomas Scheerer Deputy Attorney General, Los Angeles, California, for the defendant-appellee.

ORDER

It is ordered that the opinion filed November 8, 1988, is hereby amended as follows:

The last sentence in "II, ADEA and TITLE VII," is deleted and the following inserted therefor:

We hold that the appellant is thus barred from raising his Title VII claim. The appellant's ADEA claim is similarly time barred because he failed to bring suit within two years of the date of his cause of action accurued. 29 U.S.C. § 626(e)(1)

ADMINISTRATIVE OFFICES

LESLIE KOLTAI
Chancellor

LOS ANGELES COMMUNITY COLLEGES
617 West Seventh St.
Los Angeles, CA 90017
(213) 628-7788

Dr. Richard L. Mitchell, Jr.
1282 Redondo Boulevard
Los Angeles, CA 90019

Re: Investigative Findings conducted by the Office for Civil Rights, dated April 14, 1986, and Documents compiled by this Federal Agency in conducting their investigation in HENRY v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Docket No. 09-85-2060.

Dear Dr. Mitchell:

I am enclosing and attaching herein the investigative findings conducted by the Office for Civil Rights regarding my complaint of discrimination against the above educational institution.

I am also enclosing for your use documents that the Office for Civil Rights (OCR) used during their investigation that enabled them at reaching their de-

cision. (See page 4 of the enclosed findings). As you know,, I obtained these documents pursuant to the Freedom of Information Act, 5 U.S.C. Section 552. Since our charges are the same and we both competed for the same position of Senior Director of Occupational & Technical Education, and having been denied other similar positions on the same basis, this information should prove helpful to you and the Equal Employment Opportunity Commission in their investigation of your charge. If I can be of further help, please let me know.

Sincerely,

DEWEYLENE D. HENRY
ASSISTANT DIRECTOR
STUDENT SERVICES

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGIONAL OFFICE
221 Main St., 10th Floor April 14, 1986
San Francisco, CA 94105

Mrs. Deweylene D. Henry
6031 Sherbourne Drive
Los Angeles, CA 90056

(In reply, please refer to Docket No. 09-85-2060)

Dear Mrs. Henry:

The Office for Civil Rights (OCR) has completed its investigation of the discrimination complaint filed by you against the Los Angeles Community College District (LACCD). The investigation was conducted under the jurisdiction of 34 C.F.R. § 100.7 and § 100.3 of the regulation implementing Title VI of the Civil Rights Act of 1964, 34 C. F.R. § 100.7 (e) of the regulation prohibits recipients from retaliating against individuals who have complained, assisted or otherwise participated in

an OCR investigation; and 34 C.F.R. § 100.3(c)(3) of the regulation prohibits discrimination on the basis of race in the employment practices of the recipient. Specifically, you alleged that (a) you were denied a merit increment in retaliation for filing a complaint with OCR, and (b) 'Anglos' in acting administrative positions in the educational Services Division are given preferential treatment when being considered for permanent positions, resulting in fewer opportunities Blacks.

1. Allegation: Retaliation

In investigating retaliation complaints, OCR uses a three step analysis to determine whether illegal retaliation may have taken place. OCR must first establish that the complainant was involved in a protected activity. Next, OCR must establish that an adverse action took

place and thirdly, whether there was a casual connection between the protected activity and the adverse action. If the three conditions are met, a prima facie case of retaliation has been established. The burden of proof then shifts to the recipient who must articulate a legitimate non-discriminatory reason for its action. OCR then examines the proffered reason to determine its credibility in light of the totality of circumstances.

Findings

OCR's investigation is established that you were involved in a protected activity when you filed a complaint with our office in December of 1983. An adverse action was taken against you when you were denied merit increment. The preponderence of the following evidence suggests that there was a casual connection

between your participation in a protected activity and the adverse action taken against you.

A. Dr. Washington, Vice-Chancellor of the Education Services Division, who denied you the increment, was aware that you previously filed a complaint with our office. He was interviewed during the investigation of your previous complaint.

B. For the last three years, 1982-83, 1983-84, and 1984-85, you have been eligible to receive a merit increment. You received two merit increments and was denied one. The 1984-85 merit increment that you did not receive occurred after you filed a complaint with our office.

C. You were evaluated and denied a merit increment for the 1984-85 academic year on November 28, 1985. All

other administrators in the Educational Services Division were evaluated and granted a merit increment on August 14, 1984. Dr. Washington could not explain to OCR why your particular merit increment evaluation and subsequent denial were over three months late.

D. You were the only administrator in the Educational Services Division that was denied merit increment for the 1984-85 academic year.

E. According to Mr. David Agosto, your immediate supervisor, he initially recommended that you be denied a merit increment for the 1984-85 academic year because of the number of days you were absent from your work. Mr. Agosto told OCR that after you appealed the denial of your merit increment to Dr. Mulrooney, Vice-Chancellor of Personnel he check your attendance records for

1984-85 and found out that you were not absent as much as he initially thought. According to Mr. Agosto, he notified Dr. Washington, Dr. Mulrooney and Mr. Patterson, LACCD's Affirmative Action Officer, of his mistake and recommended that you receive the merit increment. Dr. Mulrooney stated to OCR that she does not remember speaking to Mr. Agosto. OCR was unable to confirm whether this conversation took place with Dr. Washington since he was not available to be interviewed on this subject. But Mr. Patterson told OCR that he does remember a conversation with Mr. Agosto when Mr. Agosto admitted that he does remember a conversation with Mr. Agosto when Mr. Agosto admitted that he made a mistake concerning evaluation and that he now recommended that you receive the merit increment. Dr. Washingto stated

to OCR that you were did not receive the merit increment because your work performance was average to below average and that you had one of your major responsibilities, Child Development Program, taken away because of poor work and because of your attitude.

With respect to the contention that your work was average to below average, seveeral factors undercut this argument. First, Mr. Agosto, your immediate supervisor, stated to OCR that you are an above average to excellent employee and should have received the merit increment that was denied to you. Second, 75% of the Athletic and EOPS directors that OCR interviewed stated that you performed an above average to excellent job as it related to their programs. Third, Dr. Washington could not provide OCR with any documentation or witnesses that could

substantiate his allegation that your work was average to below average. With respect to the credibility of Dr. Washington's assertion that your merit increment was denied because the Child Development Program was transferred from you based on your poor work and attitude, several factors undercut this argument. First, the duties and responsibilities of the Child Development Program were not transferred to another administrator until after you were evaluated for the merit increment. Second, the Child Development Directors did not express their dissatisfaction with you and your assistant until one month after the date you should have been evaluated. Third, Mr. Blair Sillers, Assistant to the Chancellor, stated to OCR that the Child Development Program was not transferred from you because of your poor

performance but because it was felt that the program would run more smoothly under another administrator. Even though OCR found some evidence indicating that the Child Development Program was removed from you due to a personality conflict between you, your assistant and the Child Development Director, OCR concludes that this evidence does not have a bearing as to whether you should have received a merit increment because the transfer of the Child Development Program occurred: (1) after the date you should have been evaluated; and (2) after the date you were evaluated. Consequently, OCR found that LACCD's explanation for denying you the merit increment lacks credibility and concluded that LACCD retaliated against you. After reaching its preliminary conclusion, OCR notified Ms. Mary Dowell, LACCD's General Counsel, of OCR's antici-

pated findings. In order to resolve the issue of retaliation, Ms. Dowell agreed, on behalf of the District, to do the following:

1. Pay you a lump sum of Seven Hundred twenty-Eight Dollars ($728.00). This payment is to compensate you for the 1984-85 merit increment that was denied you.

2. Change your permanent records so they reflect the fact that you were granted a merit increment for the 1984-85 academic year.

This resolution was reached without an admission of retaliation or liability by LACCD. OCR finds that this resolution is sufficient to remedy the finding of retaliation in this allegation. The prompt implementation of this remedy is necessary for LACCD to come into compliance with the regulation. It is our understanding that this remedy will be imple-

mented within ten days of receipt of this letter. LACCD will provide OCR with a copy of the document that will be issued concerning this action.

Allegation: Selection

In investigating this allegation, OCR reviewed the applications of all candidates interviewed for each applicable position, and the ½olicy and procedures used by LACCD to select certificated administrators.

Findings

Selection of certificated administrative employees follows procedures outlined in LACCD's Personnel Guide, section B456. Applications are accepted and reviewed by the Personnel Services Division to determine if the applicant meets the minimum qualifications, such as position specifications and credential requirements. For those who possess the minimum qualifica-

tion (education, experience and certification), confidential reference forms are sent to the last five references listed by the applicant. The selection/interview committee formed by the appropriate Vice Chancellor or President reviews all the files and selects the five most qualified candidates for an interview. Each member is requested to read the applicant's files prior to the interview. The interview session is conducted individually. Each member evaluates the candidates on the "Campus Interview Committee Evaluation Form". Following the completion of the rating sheet, the members give their ranking of the candidates to the Vice Chancellor. The Vice Chancellor submits to the Chancellor the names of the the two best qualified. The Chancellor recommends one candidate to the Board of Trustees

in a closed session. OCR's investigation revealed that only six of the nine positions identified by you underwent the competitive hiring process described above. OCR's investigation also revealed that all six positions were filled with the current acting administrator and that all six acting administrators were white. All candidates for each position were asked the same questions and were interviewed for approximately the same amount of time. The totality of the evidence shows that (1) all successful applicants for permanent positions were white; (2) all successful applicants for permanent positions had foremerly been acting in those positions prior to their selection; (3) experience gained in an acting capacity was a major factor in the selection of the successful candidates, as indicated by

the rating forms; and (4) that while many of the minority applicants were interviewed for the permanent positions, many of them did not have the requisite experience to successfully compete with the white applicants, who had obtained that experience during their acting appointments. OCR, therefore, concludes that there was a pattern of appointing whites for acting positions and that the experience gained in that capacity allowed the candidate an advantage in the select- for permanent positions. The next step in our investigatory process would normally involve an investigation of the process of appointing candidates to acting positions. This investigation would have focused on the criteria for selecting candidates to acting positions, the availability of qualified minority candidates, and the efforts, if any, to at-

tract qualified candidates for acting positions. Prior to the initiation of this phase of the investigation, OCR presented its preliminary findings to LACCD. Without admitting any discriminatory pattern or practice in its selection procedures, and in an effort to resolve this issue of the complaint, LACCD agreed to take the following actions as soon as they receive this Letter of Findings.

1. The District will continue to abide by its own rules and regulations in the making of appointments, with special emphasis being placed on advising all persons who participate on selection committees of the need to give specific reasons for their evaluations.

2. The District agrees that no acting appointment in the Educational Services Division made after the date of execution of a settlement agreement will be for

a duration longer than one year. The only exception to this time limit would be where a person is serving in an acting position because the incumbent of the position is on leave from which he or she is expected to return without separation from District employment.

3. The District agrees that when an acting appointment is made, the appointing authority shall be required to submit a written statement which will be retained in the appointee's personnel files explaining what factors or qualities about the appointee caused him or her to be selected.

4. The District agrees that acting appointments shall be consistent with its affirmative action program, and an Evidence of Effort form will be submitted to the District's Office of Affirmative Action Programs and Services, in

accordance with that Office's rules and regulations, when any acting appointment is made.

OCR determined that the implementation of these actions is sufficient to resolve this aspect of the complaint, and OCR makes no finding on this issue contingent on the complete adherence to the agreed upon remedial committments made by LACCD.

This correspondence represents closure of this complaint. This finding should not be interpreted to cover civil rights issues not specifically addressed herein. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence upon request. In the event OCR receives such a request, we will protect, to the extent provided by law, other personal infor-

mation which, if released, would constitute unwarranted invasion of privacy. If you have any questions, please contact Mr. Michael Brown at (415) 227-8117.

Sincerely,

John E. Palomino
Acting Regional
Director

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE WILLIAM MATTHEW BYRNE, JR.

JUDGE, PRESIDING

RICHARD L. MITCHELL, JR.,

Plaintiff,

vs.

LOS ANGELES COMMUNITY COLLEGE.

Defendant.

CV-86-5105 WMB

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

MONDAY, JANUARY 12, 1987

VERNA R. MORON
COURT REPORTER PRO TEM
UNITED STATES DISTRICT COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CA 90012
(213) 894-3015

APPEARANCES:

FOR THE PLAINTIFF:

RICHARD L. MITCHELL, JR.
IN PRO PER
1282 REDONDO BOULEVARD
LOS ANGELES, CALIFORNIA 90019

FOR THE DEFENDANT:

WARREN KINSLER, ESQ.
ATTORNEY AT LAW
617 WEST 7TH STREET
LOS ANGELES, CALIFORNIA 90017
(213) 628-7788

LOS ANGELES, CALIFORNIA: MONDAY, JAN 12, 1987.

THE COURT CLERK: Item No. 11, CV-86 5105, Richard Mitchell vs. Los Angeles Community College District. Counsel, please state your appearances for the record.

MR. KINSLER: Good morning, Your Honor Warren Kinsler for the Defendant.

MR. MITCHELL: Richard Mitchell.

THE COURT: This complaint isn't much I am going to allow him to file it; and it is best attacked by way of a Motion to Dismiss.

MR. KINSLER: L'll be bringing my motion by way of a Motion for Summary Judgment.

THE COURT: Okay.

MR. KINSLER: I'll just file it within the rule.

MR. MITCHELL: Your Honor, I'm sorry

I didn't understand.

THE COURT: You wouldn't at this point.

MR. KINSLER: Let me make a suggestion. If you are expecting a Motion to Dismiss in 20 days, may I ask for an additional 10, Your Honor?

THE COURT: I'll grant 30 days to answer or otherwise respond.

MR. MITCHELL: Your Honor, do I also get an enlargement of time to serve the defendants?

THE COURT: You don't have to serve the defendants. You've got everybody served.

MR. KINSLER: No, he doesn't your Honor.

THE COURT: Can you accept service?

MR. KINSLER: I can't accept service.

THE COURT: We'll have to give him additional--I'll give you 20 days. All right. Thank you very much.

MR. KINSLER: Thank you. Your Honor.

I, Verna R. Moron, Court Reporter Pro Tem, do hereby certify that the foregoing is a true and accurate transcript of the minutes of the within proceeding.

VERNA R. MORON
COURT REPORTER PRO TEM

J-1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE WILLIAM MATTHEW BYRNE, JR.

JUDGE, PRESIDING

RICHARD L. MITCHELL, JR.)) Plaintiff,)) vs.)) THE BOARD OF TRUSTEES OF) THE LOS ANGELES COMMUNITY) COLLEGE DISTRICT, et al.,))	CV-86-5105 WMB

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, March 23, 1987

10:00 A.M.

ROSA TREIBACH, CSR
Official Court Reporter
429-F United States Courthouse
312 North Spring Street
Los Angeles, California
(213) 626-0132

APPEARANCES OF COUNSEL:

Plaintiff in Propria Persona

Richard L. Mitchell, Jr.
1282 Redondo Boulevard
Los Angeles, California 90019

For Defendant CATHERINE CLOSE:

John K. VAN DE KAMP,
Attorney General of the State
of California

THOMAS SCHEERER, ESQ.
Deputy Attorney General
3580 Wilshire Boulevard
Room 800
Los Angeles, California 90010

Hearing re Defendant Close's motion to dismiss or for summary judgment

THE COURT: All right. We will take the Mitchell case.

MR. SCHEERER: Good morning, Your Honor. Thomas Scheerer, Deputy attorney general for Catherine Close and the State Employment Department.

THE COURT: All right.

MR. MITCHELL: Good morning, Your Honor. Richard Mitchell, plaintiff in pro per.

THE COURT: Mr. Mitchell.

All right. Do you desire to say anything on behalf of your motions?

MR. SCHEERER: Nothing, Your Honor.

THE COURT: All right. Mr. Mitchell, do you desire to be heard in opposition to the motion.

MR. MITCHELL: Yes, Your Honor. The issue before the Court involved case law is improper. The issue before this Court, according to Mr. Scheerer, is a motion for dismissal and on summary judgment.

On March 9th of this -- last week, the defendants' attorney for the Board of Trustees brought a similar issue, as the Court recall. That issue is also improper. As the Court recalls, January the 12th, '87, you ordered the defendants to answer my complaint. As of this date, no answer has been filed with this Court. The issue is whether a motion to dismiss or summary judgment is a responsive pleading pursuant to Rule 7(a). Now the Court recalls 7(a) states that--Federal Rule of Civil Procedure states that in every proceeding that shall be a complaint and an answer.

Now, a motion to dismiss or for summary judgment is precluding the federal rule of civil procedure.

THE COURT: Well, you are wrong on that issue; so I'd move to the next issue. IN other words, it is not necessary that

someone answer before they file a motion to dismiss. As a matter of fact, the opposite is normally true, and the same is true with bringing of a motion for summary judgment; so let's proceed to your next point.

MR. MITCHELL: You take all the steam out of my argument, Your Honor. I am going to respectfully differ with the Court pursuant to section 471.5, and I respectfully differ with the Court because it reads thus: "If a complaint is amended, a copy of the amendment shall be filed." The second portion: "The defendant shall answer the amendment of the complaint as amended." That's California Code of Civil Procedure, and as of this date, the defendants have not filed an answer. I'll proceed to the other section. The other section is Assembly Bill 803. Miss Close has a duty

and responsibility. That's shown in my complaint in Exhibit N. Ms. Close has a responsibility and a duty to investigate my complaint of retaliation. She, on three occasions -- I wrote to make sure that I understood that she refused-willfully refused, as is shown in Exhibit N,to investigate the complaint. I go back. A letter was submitted to me by Miss Deweylene Henry where Miss Close did in fact investigate her complaint.

Same position. Same position, same appeal, Assembly Bill 803. She investigated that complaint. She referred me to the Department of Fair Employment and Housing. December of this past year, I followed her direction, went to the Fair Employment and Housing. They said we caonot investigate your retaliate claim.

So it just shows that Miss Close has willfully violated Assembly Bill 803 and

my rights to a fair and full hearing pursuant to Miles versus Affiliated Property and Craftsmen. Thats a Ninth Circuit Case. That's a 1984 case. A full and fair hearing is mandated and calling for a person to receive due process and equal protection of the law. She just simply claimed, without any provocation whatsoever, "I refuse to investigate your complaint." I sent her three letters to make sure that this was her decision, not just mine, and I think this is incorporated in the defendants' motion before this Court to date. So with this in mind, I'll let the --

THE COURT: All right. Thank you.

Do you desire to be heard?

MR. SCHEERER: No, Your Honor. I submit it.

THE COURT: All right. I will issue an order in this motion as well as the pre-

vious motion last week--

MR. SCHEERER: Thank you, Your Honor.

THE COURT: -- and they will be combined.

MR. MITCHELL: Thank you.

THE COURT: All Right. Thank you very much.

(Proceedings concluded.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT FROM THE STENOGRAPHIC RECORD OF PROCEEDINGS IN THE FOREGOING MATTER.

ROSA TREIBACH, CSR July 1,1987

DATE

K-1

FILED JUL 17 1987

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA
HONORABLE WILLIAM MATTHEW BYRNE,JR.
JUDGE, PRESIDING

RICHARD L. MITCHELL, JR., Plaintiff, vs. THE BOARD OF TRUSTEES OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT, et al., Defendant.	No. CV 86-5105 WMB

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, April 27, 1987

10:00 A.M.

ROSA TRIEBACH, CSR
OFFICIAL COURT REPORTER
429-F United States Court-
house
312 North Spring Street
Los Angeles, CA 90012
(213) 626-0132

APPEARANCES OF COUNSEL:

Plaintiff in Propria Persona

RICHARD L. MITCHELL,JR.
1282 Redondo Boulevard
Los Angeles, California 90019

For Defendant CATHERINE CLOSE:

JOHN K. VAN DE KAMP
Attorney General of the State
of California

HENRY G. ULLERICH, ESQ.
Supervising Deputy Attorney
General
3580 Wilshire Boulevard
Room 800
Los Angeles, California 90010

Hearing re Defendant Close's motion to set aside the Default.

THE CLERK: Item No. 5, CV 86-5105, Richard Mitchell versus the Board of Trustees for Defendant Close's motion to set aside the default.

MR. ULLERICH: Good morning, Your Honor. Henry Ullerich, U-l-l-e-r-i-c-h-, deputy attorney general for the moving party.

MR. MITCHELL: Good morning, Your Honor. Richard Mitchell --

THE COURT: All right. Mr. Mitchell, I'll listen to you. I'll listen to you, yes, as to why I should not set aside the default.

MR. MITCHELL: Well, Your Honor, first of all, its very clear in my brief that the attorney has not filed a substitution in this matter to give him proper standing to represent Close, is the first objection I have and the primary objection, and this particular objection has been repeated in the defendants'

motion for summary judgment. And secondly, that Benny v. Pipes conclusively proved that the Ninth Circuit held that where there has been--they have been properly served and there has not been an answer, then an entrance for default is granted. That's the basis of my argument.

THE COURT: All right. The motion is granted. I am going to set aside the default. There is good cause why it should be set aside. How much time to answer?

MR. ULLERICH: I believe there are motions to dismiss, and summary judgment is pending at this time.

THE COURT: Yes. The motion to dismiss or summary judgment is not granted. You will have 15 days after the entrance of the entrance of the order to answer.

MR. ULLERICH: All right. Thank you.

THE COURT: Thank you very much.

MR. MITCHELL: May I ask for clarification please?

THE COURT: Yes, sir.

MR. MITCHELL: The only argument that the defendant's attorney makes here is that he is an attorney. Th's the only counsel..It is his fault. I think that the Court would look at that very seriously, if just being an attorney is an excusable mistake for him to set-- for the Court to set aside the default, then this is not only harmful and prejudice to the plaintiff's action, but I don't stand a ghost of a chance.

THE COURT: You don't what?

MR. MITCHELL: I don't stand a ghost of a chance.

THE COURT: You are the same one, aren't you, that's been here over the last ten months that I have granted

you rights to add additional parties. You misserved this individual in the first instance. There is adequate good cause, substantial good cause to allow this default to be set aside, and if don't think you stand a chance, there are remedies that you can take. The motion is granted.

MR. ULLERICH: Thank you, Your Honor.

(Proceedings concluded.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT FROM THE STENOGRAPHIC RECORD OF PROCEEDING IN THE FOREMATTER.

July 1, 1987

ROSA TREIBACH, CSR — DATE

L-1

FILED SEP 30 1987
ENTERED SEP 30 1987
CLERK, U.S. DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD L. MITCHELL, JR., Plaintiff, vs. THE BOARD OF TRUSTEES OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT, et al., Defendants.

CV-86-5105 WMB

JUDGMENT

The Court having made its Findings of Fact and Conclusions of Law now enters Judgment in favor of Defendants and against plaintiff as to all claims both federal and state. Defendants are entitled to costs in the amount of $_____

DATED: Sept. 29, 1987

WILLIAM MATTHEW BYRNE, JR.
UNITED STATES DISTRICT JUDGE

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)

M-1

FILED MAR 3 1988
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD L. MITCHELL, JR., Plaintiff-Appellant, vs. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Defendants-Appellees.	No.87-5966 DC# CV-86-5105 WMB Central California ORDER

Before: ALARCON, NORRIS and LEAVY, Circuit Judges

Appellant's petition for rehearing and rehearing en banc is denied.

MoCal 11/20/87

N-1

FILED OCT 13 1988
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD L. MITCHELL, JR.,	No.87-6553
Plaintiff-Appellant,	
vs.	No.87-6618
LOS ANGELES COMMUNITY COLLEGE DISTRICT; LESLIE KOLTAI; VIRGINIA F. MULROONEY; KENNETH S. WASHINGTON; CATHERINE CLOSE; WALTER C. MAC INTOSH; RODNEY A. PATTERSON,	D.C.# 86-5105 WMB
Defendants-Appellees.	ORDER

Before: KOELSCH, FARRIS and WIGGINS,

Circuit Judges

Appellant's petition for rehearing is denied.

O-1

SUPREME COURT OF THE UNITED STATES

No. A-451

RICHARD L. MITCHELL, JR.,

Petitioner

v.

Los Angeles Community College District

et al.

O R D E R

UPON CONSIDERATION OF THE APPLICATION OF COUNSEL FOR THE PETITIONER,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including February 10, 1989.

/s/ Sandra Day O'Connor
Associate Justice of the
Supreme Court of the
United States

Dated this 6th
day of December, 1988

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

JOSEPH F. SPANIOL, JR
Clerk of the Court

February 14, 1989

Mr. R.L. Mitchell
1282 Redondo Boulevard
Los Angeles, California 90019

RE: R.L. Mitchell v. Board of Trustees

Dear Mr. Mitchell:

The enclosed petition for writ of certiorari was received in this office on February 13, 1989, and is returned in that no signed motion for leave to proceed in forma pauperis is attached as well as an affidavit of indigency. See the enclosed sample.

Very truly yours,

Joseph F. Spaniol, Jr.
Clerk

By Sandra Elliott Spagnolo
Assistant

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

JOSEPH F. SPANIOL, JR.
Clerk of the Court

February 14, 1989

Mr. Richard L. Mitchell, Jr.
1282 Redondo Boulevard
Los Angeles, California 90019

Dear Mr. Mitchell:

Your petition for writ of certiorari, which was mailed February 10, 1989, was received today. Thirty-nine copies are being returned in three boxes. In order to docket the case, a Rule 28.2 affidavit of mailing must be submitted, and the case must be corrected to comply with Rule 33 of the Rules of the Supreme Court.

You were granted an extension of time to file your petition to and including February 10th. In order to preserve

the February 10, 1989 mailing date as the date of the docketing, a notarized affidavit must be submitted by a member of the Supreme Court bar, setting forth the details of mailing. This rule applies to pro se petitioners as well as to those who are represented by counsel.

Rule 33 sets forth the professional printing printing and the typing and photocopying requirements for cases submitted on the paid docket. Forty copies of the petition must be submitted with the dimensions of 6-1/8" by 9-1/4", and bound with white covers which are heavier than the inside pages. All material within the petition and appendix must be either professionally printed or typed with pica type and double spaced, (with the exception of footnotes and indented quotations). Please note that photoreductions are expressly

prohibited by that rule.

Please submit the corrected copies and the Rule 28.2 affidavit of mailing promptly. A notarized certificate of service must also be submitted, reflecting that three copies of the corrected petition were mailed to opposing counsel. See Rule 28. I have retained the one copy of the petition, your check in the amount of $200.00, and correspondence.

Very truly yours

Suzy McDIVITT
Assistant Clerk

cc: Warren S. Kinsler, Esq.
Thomas Scheerer, Esq.

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

JOSEPH F. SPANIOL, JR.
Clerk of the Court

March 6, 1989

Mr. Richard L. Mitchell, Jr.
1282 Redondo Blvd.
Los Angeles, CA 90019

Re: Richard L. Mitchell, Jr., v. Board of Trustees of the Los Angeles Community College District, et al., Application A-451

Dear Mr. Mitchell:

Your purpoted petition for rehearing in the above-entitled case was received March 6, 1989.

With respect to the Rule 28.2 affidavit, I do not find that Lopez Holmes Hill is a member of the Bar of this Court. Furthermore, the statement has not been notarized as required by Rule 28.2. In order to take advantage of the filing by mail rule, only one who

is a member of the Bar of this Court execute the statement and it must comply in all respects with Rule 28.2. What was submitted does not comply.

If you intend to pay the $200 docket fee, the petition and appendix must comply with Rule 33. It may be typewritten so long as the pleadings appear on paper which is 6 1/8 by 9 1/4 inches, is double spaced and the type is no smaller than pica. The sample petition that was forwarded to you was for use when one is seeking leave to proceed in forma pauperis.

If you obtain and present to this office an affidavit of mailing that complies in all respects with Rule 28.2 and if you present 40 copies of a petition which complies in all respects with Rule 33, then your petition will be placed on this Court's

docket. Your attention is directed to Rule 33.7. Your check in the amount of $200 is returned.

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk

By:

Francis J. Lorson
Chief Deputy Clerk

lg
cc: Warren S. Kinsler, Esq.
Thomas Scheerer, Esq.

OFFICE OF THE
GENERAL COUNSEL

WARREN S. KINSLER
~~Acting~~ General
Counsel

LOS ANGELES COMMUNITY
COLLEGES
617 West Seventh St.
Los Angeles, CA 90017
(213) 628-7788

September 14, 1988

Ms. Cathy A. Catterson, Clerk
United States Court of Appeals
Ninth Circuit
Post Office Box 547
San Francisco, California 94101

Re: Mitchell v. LACCD et al.,
Case Nos. 87-6553, 87-6618
Request for Publication

Dear Ms. Catterson:

Pursuant to United States Court of Appeals, Ninth Circuit Local Rule 36-4, the Los Angeles Community College District requests that the disposition by "memorandum" of the above-referenced appeal be modified and certified for publication.

The Court's decision in this case fits the criteria set forth in Local Rule 36-2 for disposition by opinion. A published opinion by the court would clarify the

status of the law with respect to the availability of Eleventh Amendment immunity to California's schools and community college districts. The Memorandum decision is a well-reasoned and scholarly analysis of the issue of whether community colleges in California are agencies of the State and thereby entitled to share in the State's immunity from suit under the Eleventh Amendment. This issue is litigated in virtually every civil rights suit filed against school and community college districts in California. This is amply demonstrated by the enclosed letters in support of publication.A/

A/ Letters of support from other attorneys throughout the State of California to the Ninth Circuit requesting publication of its August 17, 1988 Memorandum decision are shown in footnotes numbered on the following pages B through G.

The issue of Eleventh Amendment immunity for schools and community colleges in

B/

MUSICK, PEELER & GARRETT
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORP.
ONE WILSHIRE BOULEVARD
TELEPHONE (213) 629-7600

(213) 629-7633

September 12, 1988

Ms. Cathy Catterson
Clerk, United States
Court of Appeals
Ninth Circuit
P.O. Box 547
San Francisco, CA 94101-0547

Re: Richard L. Mitchell, Jr. v. Los Angeles Community College District, et al., Docket Nos. 87-6553; 87-6618

Dear Ms. Catterson:

Publication of the above referenced case is hereby requested under Ninth Circuit Rule 36-4. The Court's opinion contains an important discussion of the issue of Eleventh Amendment immunity for California community college districts. The issue of Eleventh Amendment immunity for community college districts is a legal issue of unique interest and substantial public importance. Thus, the Mitchell decision is appropriate for disposition by opinion pursuant to Ninth Circuit Rule 36-2 (d).

Moreover, while analogous cases involving the University of California and California state

California has been left unresolved in this Circuit since the Supreme Court's

B/ (Cont'd)

community college and universities compel the conclusion that state community college districts are entitled to Eleventh Amendment immunity. Thus, the Mitchell decision is also appropriate for publication under Ninth Circuit Rule 36-2(a) (clarifies a rule of law) and 36-2(b) (calls attention to a rule of law which appears to have been generall overlooked.

The decision of the panel in Mitchell is directly relevant to arguments raised by defendants/appellants in Coleen R. Roberts of the Desert, et al., Docket Nos. 85-6335, 85-6356, 856366.

For the foregoing reasons, the undersigned respectfully requests publication of the Court's decision in Mitchell.

Very truly yours,

Dana D. Howells
for MUSICK, PEELER & GARRETT

DDH:jy

decisions in Mount Healthy City School District Board of Education v. Doyle,

---

C/

SCHOOLS LEGAL SERVICE
5801 Sundale Avenue P.O. Box 11110
Bakersfield, California 93389
(805) 398-3830

September 7, 1988

Clerk
United States Court of Appeals
Ninth Circuit Judicial Circuit
P.O. Box 547
San Francisco, CA 94101

Re: Request for Publication of Memorandum Opinion; Mitchell v. LACCD, et al., Case Nos. 87-6553 and 87-6618

Dear Sir:

We ask publication of this Court's Memorandum opinion dated August 17, 1988. We make this request under your Rule 36-4.

Our office represents over 100 California school districts, including six community colleges. The subject Memorandum opinion at long last resolves a fundamental constitutional law question hanging over the heads of our clients, and we would like to see firm establishment of precedent by formal publication.

In 1986, your Court did not reach the question now resolved. In Stones v. LACCD (1986) 796 Fed. 2d 270, 272, the Court left hanging the question

(Footnote C, continued on the next page)

429 U.S. 274 (1977) and Monell v. New York City Department of Social Services, 436 U.S. 656 (1978). The issued was raised by specifically left unresolved

---

C/ (Cont'd)

of whether community colleges are California political subdivisions and thus covered by Eleventh Amendment immunities. As such, your decision clarifies the holding in Monell v. N.Y. City Dept. of Soc. Services (1978) 436, 98 S.Ct. 2018. This Memorandum resolves and announces an important rule of law, an issue of substantial legal importance.

We have separately reviewed the August 29, 1988, letter to you on this subject from attorney Mary Dowell. We wish to associate ourselves with her remarks and join in the request for publication. Thank you.

Respectfully submitted,

PETER C. CARTON

PCC:dka
cc: Warren Kinsler
Mary L. Dowell

by this Court in a published opinion Stones v. LACCD, 796 F.2d 270, 272(1986) affirming Stones v. LACCD 572 F.Supp.

D/

FOOTHILL-DeANZA
COMMUNITY COLLEGE DISTRICT
September 6, 1988

Honorable Judges
United States Court of Appeals - Ninth Circuit
United States Court of Appeals Building
125 South Grand Avenue
Pasadena, California 91105

Re: Publication of Mitchell v. Los Angeles Community College District, Nos. 87-6553; 87-6618

Honorable Judges:

I urge you to consider modification of the court's opinion in Mitchell v. Los Angeles Community College District to permit publication. The memorandum opinion issued by the court provides guidance to both plaintiffs and defendants with regard to the extent of thr Eleventh Amendment immunity of California Community Colleges.

If published, the opinion in this case will provide valuable authority for those who represent California Community Colleges, as well as other state educational institutions. Your consideration of this matter is greatly appreciated.

Respectfully,

Sharon M. Keyworth - General Counsel

1072 (C.D. Cal. 1983). In Stones, the district court specifically based its

E/

SAN DIEGO CITY SCHOOLS
EDUCATION CENTER
4100 Normal Street, San Diego, California 92103

September 6, 1988

Ms. Cathy A. Catterson, Clerk
U.S. Court of Appeals, Ninth Circuit
P.O. Box 547
San Francisco, California 94101

Re: Request for Publication of Decision in Mitchell v. LACOD, et al., Cas Nos. 87-6553, 87-6618

Dear Ms. Catterson:

Pursuant to United States Court of Appeals, Ninth Circuit, Local Rule 36-4, the San Diego Unified School District requests that the opinion in the above-referenced matter be certified for publication.

This request for publication is made on the ground that the law with respect to the availability of Eleventh Amendment immunity to California state colleges and universities. In addition, the decision will be instructive in determining the availability of Eleventh Amendment immunity to California School Districts. Thank you for your attention to this matter.

Sincerely,

JOSE A. GONZALEZ, Assistant General Counsel

decision with respect to the District and its officials. On the availability

---

F/ SCHOOL AND COLLEGE LEGAL SERVICES
SONOMA COUNTY OFFICE OF EDUCATION
410 Fiscal Drive
Santa Rosa, CA 95403
(707) 527-2429

August 30, 1988

Mr. Warren Kinsler, General Counsel
Los Angeles Community Colleges
617 West Seventh Street
Los Angeles, California 90017

Re: Richard L. Mitchell v. LACCD

Dear Mr. Kinsler:

This office represents 45 public school and college districts in California. In that capacity this office urges your office to seek publication of the Ninth Circuit Court of Appeals' decision in Mitchell v. LACCD.

The specific conclusion as to 11th amendment immunity arises in nearly all Section 1983 cases involving community colleges in California. In fact, I litigated this point for over one year in the Stewart v. Sonoma County Community College District case. Ultimately, the case was settled before the matter was resolved. Needless to say, the Mitchell decision would have saved both sides a lot of time and our respective clients some substantial fees. Pleas let me know if I may be of any further assistance.

Very truly yours, Robert J. Henry, General Cnl.

of Eleventh Amendment immunioy of California schools and community college districts from suit in Federal court.

G/

LAW OFFICES
LIEBERT, CASSIDY & FRIERSON
6033 West Century Boulevard
Suite 900
Los Angeles, California 90045

August 29, 1988

Clerk
Uniteo States Court of Appeals
Ninth Judicial Circuit
7th and Mission Streets
P.O. Box 547
San Francisco, California 94101

Re: Mitchell v. LACCD et al., Case Nos. 87-6553, 87-6618

Dear Sir:

This letter is submitted pursuant to Ninth Circuit Rule 36-4 to request publication of this Court's Memorandum in this matter filed August 17, 1988. This law firm represents many of California's community college districts, with particular emphasis on cases involving coostitutional issues. The Court's reasoning in this case is a nrioical statement of a new and important rule of law for community colleges and I urge the Memorandum publication as an Opinion. It amply meets the standards established by the court in Rule 36-2 for publication.

(Footnote G is continued on the next page)

Publication in this instant will a rule of law which is of substantial public importance. Local Rule 36-2(a) and

---

G/ (Cont'd)

- The Memorandum establishes and clarifies an important rule of law. It is well-reasoned, scholarly analysis of the question whether community colleges in California are state agencies and share in the state's immunity from suit under the Eleventh Amendment to the United States Constitution. This is a question that was specifically left unanswered by this Court in a published opinion, Stones v. LACCD, 796 F.2d 270, 272 (1986). Since it was left unansoered, the court should publish this excellent response now.

Io is a legal issue of substantial public importance. Community college districts in California have looked for clarifination of this question since the Supreme Court's decision in Monell v. New York City Department of Social Services, 436 U.S. 656, 98 S.Ct. 2018 (1978). Unless this court publishes this helpful analysis of the issue of community college immunity under the Eleventh Amendment, colleges and their officers and employees oill continue to be uncertain about the extent of their risk of liability. I urge the court to publish the Memorandum as an Opinion of the court. If I can provide further information about these issues or their effect on California community colleges please do not hestitate to contact me.

Very truly yours, LIEBERT, CASSIDY & FRIERSON
By Mary L. Dowell

Publication in this instant will clarify a rule of law which is of substantial public importance. Local Rule 36-2(a) and (d). We urge the court to publish the Memorandum as an Opinion of the Court. If we can provide further information about the issues presented by this case, or their impact on California educational institutions, please do not hestitate to contact this office.

Respectfully submitted,

WARREN S. KINSLER

GENERAL COUNSEL

WSK:pb

Enc.

1282 Redondo Boulevard
Los Angeles, CA 90019

November 18, 1988

Clerk, United States Court
of Appeals
P.O. Box 547
San Francisco, CA 94102

Re: MITCHELL v. BOARD OF TRUSTEES L.A.C.C.D., et al., 87-6553; 87-6618

ATTN: The Honorable M. OLIVER KOELSCH, Senior Judge
The Honorable JEROME FARRIS and
The Honorable CHARLES E. WIGGINS
Circuit Judges

Gentlemen:

This is in response to Appellees' attorney Warren S. Kinsler's letter of November 15, 1988 and attorney Gerald M. Sato, of ALLRED, MARKO, GOLDBERG & RIBAKOLL, his correspondence dated Noved 10, 1988 to this Court.

In its Memorandum decision filed August 17, 1988, this Court affirmed the discourt's Findings of Fact and Conclusion

of Law granting Appellees summary Judgment, and denied Appellant's timely petition for a rehearing filed October 13, 1988. In this Court's Memorandum decision, this Court ruled:

> "This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3."

On September 14, 1988, attorney Kinsler addressed this Court through a similar letter, except in this letter, unlike his November 15, 1988 letter, it is addressed to "Dear Sir or Madam.' (See Exhibit A). In his September 14, 1988 letter, it was addressed to "Ms. Cathy A. Catterson..." It appears that Mr. Kinsler's November 15, 1988 letter, in his continued clandestine fashion, would like to impress upon attorney Sato that he doesn't know anyone in the Ninth Circuit. In his September

13, 1988 letter, he petitioned this Co-ourt, requested and forwarded to this Court six (6) additional letters of support requesting that this Court pub-lish its Memorandum opinion on ground that "Publication in this instance will clarify a rule of law which is of sub-stantial public importance."(See Kin-sler's September 13, 1988 letter, p. 2 ¶2). I forwarded my objection and op-position to Appellees' requests for publication on September 26, 1988 on grounds Mr. Kinsler's requests were filed for improper purposes and in bad faith. This Court correctly noted "California state colleges and univer-sities are 'dependent instrumentali-ties of the state'..The Trustees of California State Colleges are state agencies created by the Legislature." (Court's Memo, p. 7).

However, this Court in error ruled that "under California law, the district is a state entity that possesses eleventh amendment immunity from appellant's §§ 1981, 1983 and 1985 claims in damages and for injunctive relief." (Id). As the issue stands from this Court's publication of this case, California's 106 community colleges, their officials and other litigants seeking Eleventh Amendment relief, will in error rely on this case in support of the Eleventh Amendment issue. Since the Federal courts looks to the state courts for guidance regarding Eleventh Amendment immunity, the First National Bank v. State of California, 197 Cal.App.3d 627;___Cal.Rptr.___(Dec. 1987), is the leading case regarding Eleventh Amendment immunity and California community colleges, wherein it ruled,

among other things:

> "...the fact that a state agency is created by statute to discharge a duty constitutionally imposed on the state does not transmit the agency into 'the state', nor render the state liable for its acts under a general theory of respondeat superior. (Union Trust Co. v. State of California (1908) 154 Cal. 716, 728-729 [99 P. 183]; Gonzalez v. State of California, supra, at p. 590 [105 Cal.Rptr. 804].) The authority of an agency like a school district is measured by the authority statutorily conferred upon its governing board. An agency may not act on behalf of the state, nor may the state perform a task delegated to the agency, unless statutorily authorized to do so." (At 634)... "The statute is clearly not intended to protect against a district's default on a financing agreement." (At 637).

Perhaps Mr. Sato's statement that I failed to file a complete a record as would have been presented, had I been represented at these proceedings by counsel needs a brief review. I presented this Court with twelve specific counts of misconduct demonstrated by attorney

Kinsler; none of those charges or evidence presented were discussed. I presented this Court with evidence demonstrating where attorneys Thomas Scheerer nor Henry G. Ullerich (attorneys representing Appellee Catherine Close) failed to substitute for attorney Warren S. Kinsler when attorney Kinsler removed this action from the state court to the federal court and refused to represent Appellee Close after removing this case. But most importantly, I called to the attention of this Court where Judge Byrne, after ordering me to file a second amended complaint, (1) gave Mr. Kinsler instructions on the best way to attack my complaint and (2) subsequently granted Mr. Kinsler's motion in keeping with those instructions:

THE COURT: This complaint isn't much. I am going to allow him to file it, and it is best attacked by way of a motion to dismiss.

MR. KINSLER: I'll be bringing my motion by way of a summary judgment.

THE COURT: Okay.

MR. KINSLER: I'll just file it within the rule.

MR. MITCHELL: Your Honor, I'm sorry, I didn't understand.

THE COURT: You wouldn't at this point.

MR. KINSLER: Let me make a suggestion. If you are expecting a Motion to dismiss in 20 days, may I ask for an addition 10, your Honor?

THE COURT: I'll grant 30 days to answer or otherwise respond." (See Exhibit C).

So, with the above documents presented only as part of the reasons why a more "completed record" would have presented a different result, is highly questionable. In his November 15, 1988 letter as shown in Exhibit A, attorney Kinsler stated:

"...Mr. Sato has no standing to object to the Court's decision to order publication because he does not represent a party."

The six attorneys he requested letters of support, requesting publication of this Court's August 17, 1988 Memorandum decision, also did not represent a party. Mr. Sato represented three of Appellees' former employees, who happened to be white, sued the Appellees' on ground of age discrimination, and was granted an out -of-court settlement.

This evidence was presented, argued but denied as one of the material issues of material facts. (See Exhibit D).(Also see Appellant's Opening Brief, Appendix XXXVII).

For all the foregoing reasons, I respectfully request that this Court reverse its Order and Opinion of November 8, 1988 and its publication of the same.

Sincerely,

Richard L. Mitchell, Jr.

RLM:jf
Encls.

cc: Willie Brown, Esq.
Speaker of the California
State Assembly
State Capitol
Sacramento, CA 95814

Anthony Essez, President
NAACP
2907 West Vernon Avenue
Los Angeles, CA 90043

Paul Hoffman, Esq.
Director, ACLU
633 South Shatto Place
Los Angeles, CA 90005

Bill Lee, Esq.
Center for Law and Justice
10951 West Pico Blvd., 3rd Floor
Los Angeles, CA 90064

Gerald M. Sato, Esq.
ALLRED, MARKO, GOLDBERG
& RIBAKOFF
6380 Wilshire Blvd., Suite 1404
Los Angeles, CA 90048

Dr. Donald G. Phelps, Chancellor
Los Angeles Community College
District
617 West Seventh Street
Los Angeles, CA 90017

John Van De Kamp
Attorney General of the State
of California
3580 Wilshire Blvd., RM. 800
Los Angeles, CA 90010

INTER-OFFICE CORRESPONDENCE
Los Angeles Community Colleges 12-2-83

TO: Mr. William Spaeter, Vice Chancellor, Personnel Services

FROM: Deweylene D. Henry, Assistant Director, Office of Student Services

SUBJECT: INTERVIEW PANEL FOR DECEMBER 2, 1983, Senior Director Occupational and Technical Education

In that I am one of the candidates scheduled for an interview, I am very concerned that no candidate, with the exception of Linda Thor, can be fairly evaluated today.

The panel has been established with direct linkage to the person presently acting in the position, Linda Thor. The panel members that I am concerned with are listed below:

1. Lowell Erickson - Linda Thor's former boss from the Public Information Office of the Chancellor.

2. John McDowell - a) Current (November 6,7,8,9) news stories in Washington Post Newspaper regarding Programs in Linda's area. His program receives funding from Linda Thor's program.

3. Ted Scheer - a) Husband of a paid employee who recently was under Linda's supervision, also; Glenna Scheer, his wife, has joint/proposal for her shop submitted thru Linda Thor's office awaiting funding. I don't mind the "Shoe-In"; but between Dr. Mitchell and his obvious "connections", and Linda Thor's "guarantees" - this is just awful. I do plan to be interviewed, but I was advised by my attorney to inform you of my concerns, of the lack of credibility that the committee represents.

DDH:jgp

cc: K. Washington
B. Henry
D. Agosto
E. Palmer

RICHARD L. MITCHELL, JR.
1282 Redondo Boulevard
Los Angeles, California 90019
(213) 936-9215

Plaintiff in Propria Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD L. MITCHELL, JR., Plaintiff, vs. THE BOARD OF TRUSTEES OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT, et al., Defendants.	CV-No. 86-5105 WMB DECLARATION OF DEWEYLENE D. HENRY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS ALTERNATIVELY SUMMARY JUDGMENT

Date: March 9 1987

Time: 10:00 A.M.

I, DEWEYLENE D. HENRY, declare and state as follows:

1. I am a resident of the State of California, I reside in Los Angeles County. I make this affidavit in sup-

port of the Plaintiff's opposition to a motion by the Los Angeles Community Colleges for a Summary Judgment.

2. I make this affidavit upon personal knowledge and experience of the facts contained herein, and if called as a witness, I could and would testify completely and competently thereto.

3. I am an employee of the Defendants' District at Los Angeles City College. I have been an employee of the College District since 1977. I was employed from 1977 until June 30, 1986 in the District Educational Services Division as Assistant Director. On June 20, 1986, I was retaliated against and demoted from an administrative position to a teaching position.

4. The demotion to the teaaching position was in retaliation for my having filed a civil rights claim against the

District for the elimination of the District's practices of racial discrimination in their hiring and promotional job vacancies and opportunities.

5. I treated the demotion and job reassignment as a constructive discharge and I resigned my position with the District.

6. I received a letter of Findings from the Office of Civil Rights dated April 14, 1986 that clearly stated that the Los Angeles Community College discriminates in their employee promotional and hiring practices of minorities.

7. The District entered into a settlement agreement with me and the Office for Civil Rights n July 8, 1986. The settlement agreement provided that the defendant reinstate me to an administrative position and that my resignation be rescinded.

8. On October 3, 1986, I entered into a Compromise and Release of a Worker's Compensation claim that I had filed in January, 1983 against the District for stress, high blood pressure and ulcers brought upon me by the terrible discrimination employment practices of the District. The award was granted to me as a 19% permanent disability in the dollar amount of $21,500.00.

9. I filed a charge of employment discrimination based on age and race with EEOC on September 16, 1983, within three hundred (300) days of the commission of the unlawful employment practice. I received a notification of Right to Sue letter from the U.S. Dept. of Justice dated May 16, 1986.

10. The Federal suit was filed in the United States District Court, Central District of California on August

14, 1986. The case is presently in the court of Judge Manuel Real, CASE No. CV-86-5331.

11. My attorney and representatives of the District are currently neotiating an out of court settlementof the case under court Rule No. 68.

12. I was introduced to Dr. Richard Mitchell in September 19, 1983 by Dr. Walter McIntosh, President of Los Angeles Southwest College. Dr. McIntosh informed me that I was not the only Black being discriminated against. He informed me that for the position of Senior Director of High and Occupational Education, that I was not hired for, Dr. Mitchell was also denied the position.

13. I began correspondence with Dr. Mitchell and soon noted the similarity in our charges, experiences and willful violations of unlawful employment

practices in the discrimination of minorities that he was also undergoing in the District.

14. Dr. McIntosh provided Dr. Mitchell with my approval, my home phone number. After many conversations and reviewing many documents and files, I believe that Dr. Mitchell has been denied equal employment opportunities by the Los Angeles Community Colleges.

15. I believe that the District has engaged in, and is engaging in the unlawful practices with the purpose and effect of denying Dr. Mitchell equal employment opportunities for employment because of his Race, Age and Sex.

16. I believe that approximately 15 "acting" positions constituting almost all the positions filled by "acting" appointments, were filled by whites candidates in order to place Dr. Mitchell

and myself at a disadvantage in the competitive selection process at the time the job was no longer "acting" but permanent. The experience criteria for each position was the number one reason given by permanent selection interviewers when questioned on their selection of applicant preferences.

17. I provided Dr. Richard Mitchell with copies of letters in my files, documents and information that was in my custody which was relevant to his charge of discrimination vs. the District. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 1987 at Los Angeles, California

DEWEYLENE D. HENRY - February 17, 1987

INTER-OFFICE CORRESPONDENCE
Los Angeles Community College

TO: Dr. Leslie Koltai, Chancellor

FROM: Rodney L. Patterson, Director
Office of Affirmative Action
Programs and Services

SUBJECT: SUMMARY OF OFFICE ACTIVITIES

A. COMPLAINT ACTIVITY

1. Deweylen Henry (OCR): We have confirmed scheduled appointments for OCR's on-site investigation to occur September 11-13. A copy of the schedule is attached.

The substance of the preliminary information is as follows:

a. Prompt completion of an overdue performance evaluation for Mrs. Henry is recommended (as well as others in the Division);

b. The investigator(s) will request specific documentation to support Dr. Washington's statement that her "perfor-

mance has been less than satisfactory",
c. in addition to the merit increment issue, six (6) permanent administrative appointments of formerly acting incumbents are under OCR review as examples of alleged discriminatory hiring practices. The fact that 35% of the candidates interviewed were minority (yet none were appointed) may be an issue with OCR. The agency may argue "program specificity" as per the Grove City principle. Persons appointed as a results of these selection decisions include: Nancy Conrath, Dr. Novotney, Don Culton, Paul Stanberry, Hilda Tomberlin and Dr. Mulrooney. We should be prepared to advance districtwide data, or other "botton line" statistics, in order to rebut any inference of unlawful selection in this narrow set of decisions.
d. We are advised that the OCR Staff

Investigator will be accompanied by Mr. Jack Lee, Staff Attorney.